



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 04 2006

Neil P. Reiff, Esq.
Sandler, Reiff & Young, P.C.
50 "E" Street, SE
Suite 300
Washington, DC 20003

RE: MURs 5564 and 5575
Alaska Democratic Party
and Marge Kaiser, in her
official capacity as treasurer

Dear Mr. Reiff:

On October 19 and 27, 2004, the Federal Election Commission notified the Alaska Democratic Party and its treasurer, your clients, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. Copies of the complaints were forwarded to the Alaska Democratic Party at that time.

Upon further review of the allegations contained in the complaints, and information provided by you, the Commission, on April 3, 2006, in MUR 5564, found reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d), 441a(f) and 434(b). On the same date, in MUR 5575, the Commission found reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d), 441a(f) and 441d(a). A combined Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of these matters. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matters or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of these matters. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

These matters will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Thomas J. Andersen or Christine C. Gallagher, the attorneys assigned to these matters, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Alaska Democratic Party and Marge Kaiser, MURs 5564, 5575
in her official capacity as treasurer

I. BACKGROUND

These matters were generated based on complaints filed with the Federal Election Commission by Wiley Brooks (MUR 5564) and Timothy A. McKeever (MUR 5575). *See* 2 U.S.C. § 437g(a)(1). Both matters involve allegations against the Alaska Democratic Party ("ADP") in connection with the U.S. Senate race in Alaska in 2004. The complaint in MUR 5564 alleges that substantial transfers by the Democratic Senatorial Campaign Committee ("DSCC") to ADP were used to support the candidacy of Tony Knowles and exceeded the coordinated expenditure limits set forth in the Federal Election Campaign Act of 1971, as amended ("the Act"), resulting in excessive in-kind contributions from ADP to Tony Knowles for U.S. Senate ("Knowles Committee"). The complaint in MUR 5575 alleges that ADP made excessive contributions to the Knowles Committee by distributing mailers that promote Knowles or attack his opponent, and which do not fit within the "volunteer materials" exemption of the Act.

Based on the facts presented in the complaint, the responses, as well as other available information, there is reason to believe that ADP violated the Act in MUR 5564 in connection with certain expenditures made by ADP in 2004. In MUR 5575, there is reason to believe that ADP violated the Act in connection with the mailers at issue.

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II. FACTUAL & LEGAL ANALYSIS

A. MUR 5564

1. Facts

ADP made significant disbursements in 2004 on what it described as a "field program," which included the opening of regional offices in several communities across Alaska, as well as the hiring of numerous "summer interns." In the months leading up to the 2004 general election, these paid staffers appear to have conducted various activities out of the regional offices, such as canvassing neighborhoods promoting Tony Knowles' 2004 campaign for U.S. Senate. ADP reported a portion of program expenses as "section 441a(d)" expenditures and also received monthly reimbursements from the Knowles Committee in connection with the program. The central issue appears to be whether such amounts sufficiently covered all of the program activities undertaken by ADP on behalf of Knowles; if not, then it appears that ADP made excessive in-kind contributions to the Knowles Committee by exceeding its coordinated expenditure limit.

Complainant alleges in MUR 5564 that DSCC transferred \$1.7 million to ADP and that ADP used the money to support Knowles' candidacy, resulting in "illegal in-kind donations." Complaint at 1. Complainant acknowledges that DSCC and ADP could make coordinated expenditures on behalf of the Knowles Committee under 2 U.S.C. § 441a(d), but that such spending crossed the limits for national and state parties.¹ The transferred money was allegedly spent by ADP in coordination with the Knowles Committee to open the field offices and to pay canvassers who operated as Knowles campaign workers.

¹ The combined limit was \$149,240 for 2004. See *2004 Coordinated Party Expenditure Limits*, The (FEC) Record, 15-16 (March 2004).

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1 The complaint attached an e-mail from the treasurer for the Knowles Committee allegedly
2 sent to Knowles "supporters." *Id.* at 2. The e-mail, dated April 16, 2004, included the subject line
3 "housing needed" along with the following text:

4 Hello friends,

5

6 We wanted to let you all know that [ADP] is organizing a summer intern program
7 here in Anchorage (and across the state). They are hiring interns to hit the streets
8 and go door-to-door to spread Tony's message and talk to voters about why they
9 should vote for him.

10 We are asking the interns (either college students or high school
11 upperclassmen) to commit to at least 6 weeks over the summer, for five hours a
12 day either 5 or 7 days a week, with the 5 hours being in the afternoon during the
13 week and during the day on the weekend. Depending on if they commit to 5 or 7
14 days, we will pay them accordingly. So if you know any interested students,
15 please send them our way. E-mail . . . oliver@alaskademocrats.org.

16 Second, although most of these interns will be from Alaska, we have had some
17 interest from students from the Outside. Since we aren't paying them much and
18 they won't be here for very long, we need places for them to live for 6-8 weeks.
19 If anyone has a spare bed they can use to house one of these committed young
20 Democrats' [sic] please also let Oliver know.²

21
22 Complaint, Exhibit C.

23 The complaint also included an ADP flyer allegedly "being distributed on the campus of
24 the University of Alaska Anchorage on September 2, 2004."³ The flyer stated,

25 Go door to door to elect Tony Knowles! . . . [ADP] is looking for outgoing and
26 friendly people who can talk to voters at their doors about the upcoming Senate
27 election. To be eligible, you must be at least 16 years of age, a supporter of Tony
28 Knowles and available to work at least 6 hours a week. You will be paid \$10 per
29 hour. If you are interested, call Deven or Megan at 632-3214.⁴

² ADP reported biweekly "Payroll" disbursements to an Oliver Gottfried from March through November 2004.

³ A press account referencing the flyer stated it "was posted on college campuses" by ADP. Sam Bishop, *Reports show differing party help to candidates*, FAIRBANKS (Alaska) DAILY NEWS-MINER (Oct. 9, 2004).

⁴ ADP reported "Payroll" disbursements to a Deven Nelson from April through November 2004, and to a Megan Huth from July through November 2004. The complaint also included a document suggesting that Megan Huth sent a Knowles press release on September 28, 2004, using ADP's e-mail address. The release announces Knowles' debate schedule and states "Paid for by Tony Knowles For Senate." Complaint, Exhibit N. ADP responds that it disseminated the press release because "it already had established an effective email distribution list for local and (Footnote continues on following page)

1
2 Complaint, Exhibit F. Complainant asserts that "ADP is paying payroll of at least 104 different
3 people [in 2004] including Jim Messina, who was reported in the press to be Mr. Knowles'
4 campaign manager" ⁵ *Id.* at 1. Around the time of the November 2004 general election, ADP
5 was reporting "payroll" disbursements to over 400 individuals, including Messina. As discussed
6 *infra*, the Knowles Committee reported payments to Messina during the same period.

7 Complainant also submitted a copy of a web page from the Knowles Committee website
8 containing a July 23, 2004 New York Times article. Complaint, Exhibit D. The article describes
9 an encounter by "Campaign Worker" Max Hensley with a grizzly bear "[w]hile out rounding up
10 potential supporters for the Senate candidate, Tony Knowles" ⁶ Complainant claims that
11 Hensley's salary was being paid by ADP and that the Knowles Committee reported no payments to
12 him. ⁷ Complainant alleges that ADP failed to report the salaries of Hensley and other field
13 workers as in-kind contributions and that disclosure reports filed by the Knowles Committee do
14 not reflect the receipt of such in-kind contributions.

national media outlets for its own internal use," and that the e-mail was a non-public communication that did not "add any incremental cost." ADP Response at 4.

⁵ A search of news databases uncovered articles identifying Messina as "manager" or "director" of the Knowles campaign. See, e.g., Nicole Duran, *Knowles Taps Durgan Chief For His Race*, ROLL CALL (June 8, 2004); *Don't Make a Messina of Things*, THE HOTLINE (American Political Network), Vol. 10, No. 9. (June 8, 2004); *Senate 2004 Alaska: Lisa, Lisa!*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (Aug. 25, 2004).

⁶ A July 23, 2004 article in The Hotline covering Hensley's bear encounter referred to him (Hensley) as a "Tony Knowles summer canvasser." *People When Animals Attack: Gives New Meaning to "Grin and Bear It"*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (July 23, 2004).

⁷ ADP reported Schedule B "Payroll" disbursements to Hensley of \$492, \$394 and \$334 on July 15, July 30, and August 13, 2004, respectively. It also reported Schedule F "Payroll" disbursements to Hensley of \$98.47 and \$83.60 on July 30 and August 13, 2004, respectively. Although the Knowles Committee does not appear to have reported any disbursements to Hensley, as discussed *infra*, it reported large monthly disbursements to ADP for such items as "Reimbursement for staff salaries."

1 A review of news databases indicates that other individuals on ADP's payroll were
2 reportedly engaging in campaign activity on behalf of Knowles. For example, a July 2004 news
3 account describes the daily activities of two "Knowles workers" paid by ADP.⁸

4 At the Knowles campaign, the workers are more conventionally used as door-to-
5 door canvassers. "Shoe leather is essential for any campaign," Knowles
6 spokesman Bob King said. . . .

7 The Knowles workers start their day at campaign headquarters, where they
8 receive walking assignments for the day. Then they go out and spend the day
9 canvassing at Anchorage doorsteps.

10 In South Anchorage, a middle-aged woman peers through her screen door at
11 [Marissa] Coughlin, who delivers her endorsement of Knowles in a series of
12 gulps, starts and factoids. . . .

13 "Are you a supporter of Governor Knowles?" asked Coughlin

14

15 Down the block, Coughlin's canvassing partner, [Caitlin] Legaeki, approached
16 another door. A man appeared at the upstairs window, and Legaeki identified
17 herself as a Knowles campaign worker.

18

19 Following a brief conversation with Legaeki, [the man's wife] pledged to support
20 Knowles in the election.⁹

21
22 A graphic for the article states that Coughlin and three other ADP workers "go
23 over walk routes as they canvass a neighborhood with Tony Knowles' campaign
24 literature."¹⁰ In another article, Legaeki reportedly "stated that she [was] one of 31
25 canvassers employed by [ADP] to go door-to-door promoting Knowles."¹¹

⁸ ADP's disclosure reports show biweekly "Payroll" disbursements in the summer and fall of 2004 to persons identified in the article. Although the Knowles Committee does not appear to have reported any disbursements to these individuals, as discussed *infra*, it reported large monthly disbursements to ADP for such items as "Reimbursement for staff salaries."

⁹ Kevin Boots, *Campaign Kids: Young Workers Build Signs, Knock on Doors for Murkowski, Knowles*, ANCHORAGE DAILY (July 16, 2004).

¹⁰ *Id.*

¹¹ Liz Ruskin, *Candidates Battle Over 'Outside Activists'*, ANCHORAGE DAILY (June 23, 2004).

1 Complainant avers that the Knowles Committee website contains further information
2 demonstrating coordination of expenditures between ADP and the Committee. The complaint
3 included a copy of a Knowles campaign web page "from April of 2004" that states:

4 The Alaska Democratic Party opened regional offices in Anchorage, Fairbanks,
5 Juneau, Wasilla, and Soldotna in the past few weeks and more field offices will
6 soon open in Barrow, Bethel, Nome, Kotzebue, Kodiak, Valdez, Sitka and
7 Ketchikan. Local supporters will be joined by experienced field staffers in
8 conducting voter registration and outreach to build grassroots support for
9 Knowles [sic] candidacy heading up to election-day.

10
11 Complaint, Exhibit B (emphasis in original). An archived web page from the Knowles website
12 from November 2004 lists sixteen operational ADP "Coordinated Campaign Field Offices,"
13 including most of the office locations listed above as well as offices in Kenai, Eagle River, Homer
14 and Seward.¹²

15 The Knowles Committee website refers to the ADP offices as "Knowles Offices" and
16 includes links for each of the listed offices, advising the viewer, "To contact an office in your area,
17 please click on one of these regional offices run by the Alaska Democratic Party."¹³ The web
18 pages for these offices contain contact information (c.g., individuals to contact at each office,
19 office addresses and phone numbers) and various references to Knowles' candidacy; there are no
20 references to other candidates. For example, the web page for the "Kenai Office" states, "We are
21 here to talk to people on the Peninsula about Tony Knowles and his plan to put Alaska first in the
22 U.S. Senate. Stop by our office anytime to learn more about Tony or to find out how you can help

¹² See <http://web.archive.org/web/20050712114705/http://www.tonyknowles.com/rural_offices.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc>. The "Kenai Office" is located in Soldotna, Alaska; it may be the same office called the "Soldotna" office in Exhibit B of the Complaint. Also, the "Anchorage Office" listed in the website has a different address and phone number than office listed as ADP headquarters on ADP's website in 2004. See, e.g., <<http://web.archive.org/web/20040205201033/alaskademocrats.org/contact.html>>.

¹³ See <http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc>.

1 get Tony elected.”¹⁴ A photograph of the office posted on the web page shows the outside window
2 covered with “Knowles for Senate” posters; no other candidates are listed. ADP’s website from
3 the same time period does not reference any of these regional party offices; it included information
4 only for its Anchorage headquarters.¹⁵

5 It appears that all of the regional offices may have shut down shortly after the
6 November 2004 election. ADP’s disclosure reports do not appear to show any rent, utilities or
7 other costs related to these offices after 2004; in addition, it appears that, within one month
8 following the election, the individuals listed as office contacts were no longer employed by ADP.¹⁶

9 ADP admits that it solicited students and opened regional offices in 2004 in an effort to
10 elect Knowles, but claims the “field program” benefited the entire Democratic ticket and was not
11 carried out exclusively for Knowles’ benefit. ADP Response at 2. ADP describes the field
12 program as follows:

13 The overwhelming majority of the activities undertaken by over 150 field
14 organizers were, in fact, 1) door-to-door voter registration, voter identification, and
15 material distribution; 2) volunteer recruitment on behalf of the party, including
16 recruiting for precinct captains and election-day poll watchers; 3) phone voter
17 identification programs and persuasion calls; 4) encouraging voters to vote by
18 absentee ballot [both door-to-door and over the phone]; and 5) meeting with
19 legislative candidates/campaigns and party officials to enlist their participation in
20 all of the aforementioned activities.

21
22 ADP Response at 3-4.

23 Early in the election cycle, based on a “good faith estimate,” ADP decided to allocate 20%
24 of field program expenses to the Knowles campaign. ADP Response at 2. ADP claims the other

¹⁴ See <http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?office=Kenai&PIIPSESSID=ce8bd9bbb0382967f6a7425af04094bc>.

¹⁵ See <<http://web.archive.org/web/20041013003409/http://www.alaskademocrats.org>>.

¹⁶ None of the regional offices are currently listed in Directory Assistance.

80% of staff time was spent undertaking "generic activity." ADP Response at 2. ADP's Executive Director states in a declaration that ADP allocated "20% of all aspects of the field program, including payroll, rent, utilities, phone bills, and other office operating expenses." Declaration of Bridget T. Gallagher, dated Dec. 8, 2004, at ¶ 4. ADP allocated "a portion of each month's costs . . . of its field program to either its 441a(d) authority" or was "timely reimbursed for an applicable portion" by the Knowles Committee.¹⁷ *Id.* at ¶ 5. ADP's Executive Director claims that she "developed and oversaw the ADP field operation," that no field workers were "supervised directly" by the Knowles campaign, and that ADP ultimately allocated \$473,683.63 either to its coordinated expenditure limit or as reimbursements received by ADP from the Knowles campaign. *Id.* at ¶¶ 2, 5-6. ADP did not provide any breakdown explaining how it arrived at that figure; however, ADP's 2004 disclosure reports show \$134,161 in total coordinated expenditures on behalf of Knowles from April through September 2004, and an additional \$340,264 in reimbursements from the Knowles Committee from April through November 2004, for such items as "staff salaries" and "office rent."¹⁸ The sum of these two figures, \$474,425, is close to the allocated amount of 20% claimed by ADP's Executive Director.

¹⁷ ADP appended the following statement to its May, August, September and Pre-General monthly reports for 2004:

The monies received by the Alaska Democratic Party from the Knowles for Senate campaign reflect reimbursement for staff salaries and other office expenses for a portion of the ADP's field program a portion of which has been determined to be directly on behalf of and therefore allocable to Tony Knowles for Senate. See 11 C.F.R. / 106.1. The amount allocated to the Knowles for Senate campaign reflects a determined percentage of staff salaries as well as other office expenses such as rent and office supplies for the portion of the field staff's time spent working directly for the Knowles campaign. The Knowles campaign intends to pay for a portion of these activities on a regular basis. The amounts spent over and above the amount each month by the ADP for these activities will be disclosed as a coordinated expenditure on behalf of the Knowles for Senate campaign pursuant to 2 U.S.C. / 441a(d) by the ADP on Line 25 of its monthly reports.

¹⁸ The following data show ADP's receipts from the Knowles Committee:

Amount	Reported by Knowles	Description by Knowles	Reported by ADP	Description by ADP
12,500.00	04/08/04	Reimbursement for staff salaries	04/07/04	reim. for staff salary

(Footnote continues on following page)

Respondent asserts that since it allocated 20% of all of the costs of its field program as a coordinated expenditure or was timely reimbursed by the Knowles Committee for that portion of the field program that was not allocated to the coordinated expenditure limit, then it was appropriate to refer to ADP's offices as "Knowles offices." ADP Response at 2.

ADP contends that a significant portion of the field program was comprised of a "canvass component that employed part-time staff whose *sole* activity was going door to door in urban communities to register voters, sign them up for absentee ballots, and/or identify them." ADP Response at 4 (emphasis in original). "Any voter identification information gleaned from these activities was the sole property of the ADP and was not provided to the Knowles campaign for its own use." *Id.* ADP asserts that the "phone activities undertaken by the field employees" were the "only public communication(s) in which these employees engaged in" and "reflected a small percentage of their time on any given day and, in many cases, were generic in nature." *Id.* ADP claims that its decision to allocate 20% of field program costs was "an overly conservative reading of the current campaign finance laws" because "the only activity that would require any allocation to the Knowles campaign would be that portion of the phone calls that persuaded voters to vote for or against the Knowles campaign." *Id.*

12,500.00	05/01/04	Reimbursement for staff salaries	05/03/04	reim. for staff salary
12,500.00	06/01/04	Reim. for staff salaries	06/07/04	reim. for staff salary
25,000.00	07/01/04	Reimbursement for staff salaries	07/07/04	reimb. for staff salaries
35,202.00	08/07/04	Reimburse shared costs	08/11/04	share of salary expenses
20,030.18	09/01/04	Reimburse percent salaries office costs	09/09/04	staff sal./travel/polling
44,750.00	10/13/04	Percent allocated directly to campaign	10/13/04	staff salary and office rent
30,000.00	11/01/04	Reimbursement for Salary & shared Costs	11/02/04	pmt. for rent/salaries
145,000.00	11/05/04	Reimburse share of operating costs	11/09/04	pmt. for salary and rent
2,782.20	11/22/04	Reimburse share of operating costs	11/24/04	GOTV salaries

\$340,264.38 Total

1 **2. Analysis**

2 Pursuant to the party expenditure limits set forth at 2 U.S.C. § 441a(d), ADP's maximum
3 general election coordinated expenditure limit on behalf of the U.S. Senate candidacy of
4 Tony Knowles was \$74,620.¹⁹ Based on its disclosure reports, ADP appears to have reached that
5 limit on or around July 30, 2004. During the period from July 30 through September 30, 2004,
6 ADP reported an additional \$59,541 in coordinated expenditures on behalf of Knowles. Pursuant
7 to 11 C.F.R. § 109.33(a), ADP could have made additional coordinated expenditures as long as the
8 Democratic National Committee ("DNC") properly assigned it some portion of DNC's own
9 coordinated expenditure limit of \$74,620. However, since all the ADP filings at issue specifically
10 indicate that ADP had not "been designated to make coordinated expenditures by a political party
11 committee," and the response does not state otherwise, it appears that ADP exceeded its
12 coordinated expenditure limit by \$59,541.

13 ADP reported \$1,713 in general election contributions to the Knowles Committee, \$3,287
14 short of its \$5,000 limit. See 2 U.S.C. § 441a(a)(2)(A). Accordingly, based solely on ADP's
15 disclosure reports, it may have made \$56,254 (\$59,541 - \$3,287) in excessive in-kind contributions
16 in the form of coordinated expenditures on behalf of the Knowles Committee in connection with
17 the 2004 field program.

18 Although ADP does not provide a total cost figure for its field program, based on its claim
19 that the Knowles Committee's share was 20% or \$473,683.63, total program costs would have
20 amounted to \$2,368,418. The key issue concerning the allegations involving the field program is

¹⁹ See 11 C.F.R. § 109.32(b); The (FEC) Record, 15-16 (March 2004).

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whether ADP's 20% figure (or \$473,683.63) represents an accurate allocation of the Knowles Committee's share of costs.

The regulations provide that expenditures made on behalf of federal candidates shall be attributed "according to the benefit reasonably expected to be derived." 11 C.F.R. § 106.1(a)(1). For example, in the case of a phone bank, "the attribution shall be determined by the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates."²⁰ *Id.* Expenditures for rent, personnel, voter registration and get-out-the-vote drives "need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate." 11 C.F.R. § 106.1(c)(1).

The available information suggests that more than 20% of ADP's field program disbursements may have constituted expenditures that were directly attributable to Knowles and should have been allocated accordingly. First, perhaps most tellingly, it would seem unlikely that Jim Messina, who appears to have served as Knowles' campaign manager, would have been spending more of his time working for ADP than the Knowles Committee; yet during much of the relevant time the majority of his salary was being paid for by ADP.²¹

²⁰ If a phone bank communication referring to a federal candidate included "another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them," then fifty percent of the disbursement is attributed to the candidate, provided that certain other conditions are met. 11 C.F.R. § 106.8.

²¹ ADP reported \$20,162 in "Payroll" disbursements to Messina as follows: \$2,356 on 7/15/04, \$2,356 on 7/30/04, \$2,356 on 8/13/04, \$2,356 on 8/31/04, \$2,356 on 9/15/04, \$2,356 on 9/30/04, \$2,367 on 10/15/04, \$2,373 on 11/3/04 and \$1,286 on 11/09/04. The Knowles Committee reported \$32,042 in "Salary" disbursements to Messina as follows: \$2,337 on 6/16/04, \$2,200 on 7/2/04, \$2,200 on 7/16/04, \$2,200 on 7/30/04, \$2,200 on 8/13/04, 2,200 on 8/27/04, \$2,200 on 9/10/04, \$2,200 on 9/24/04, \$2,201 on 10/8/04, \$2,215 on 10/22/04, \$7,674 on 11/05/04 and \$2,215 on 11/5/04.

An article in Roll Call provided further detail regarding Messina's role:

(Footnote continues on following page)

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1 Second, ADP's field offices appear to be party offices in name only, having been set up
2 primarily to serve Knowles, as indicated by the fact that the contact information for several offices
3 across the state appeared only on Knowles' website. Based on a review of archived web pages, no
4 references to regional ADP offices appeared on ADP's website during 2004, even though ADP
5 appears to have been paying for 80% of the rent and utilities. All nineteen individuals listed on
6 Knowles' website as contacts for the regional offices were on ADP's payroll, yet the information
7 below these names referenced only the Knowles campaign and included no references to the party
8 or to other candidates (e.g., "stop by our office anytime to learn more about Tony or to find out
9 how you can help get Tony elected").²² Despite ADP's assertion that the "field operation was . . .
10 designed to . . . build the party's permanent field operations for future elections," *see* ADP
11 Response at 2, all of the regional ADP offices appear to have shut down shortly after the
12 November 2004 election, following Knowles' defeat. Given these circumstances, it appears that
13 the regional offices were set up mainly to support Knowles' candidacy, and that ADP should have
14 attributed their costs (rent, utilities, etc.) accordingly.

Jim Messina has taken a leave of absence from his position as chief of staff to Sen. Byron Dorgan (D-N.D.) to serve as Knowles' Senate campaign director.

Messina joins longtime Knowles aide [and treasurer] Leslie Ridle in overseeing the Democrat's effort to unseat Sen. Lisa Murkowski (R).

In an acknowledgement to how tight the race is expected to be – and the pivotal role it could play in determining which party controls the Senate – Dorgan was willing to let his chief head out to the Last Frontier, said an informed source.

....

"This is going to be an extraordinarily close race and we are very excited to have Jim here helping out," added Matt McKenna, spokesman for Knowles.

....

As campaign director, Messina will "lend his expertise to every facet of this campaign," McKenna said. Nicole Duran, *Knowles Taps Dorgan Chief For His Race*, *ROTTEN CALL* (June 8, 2004).

²² See <http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?office=Kenai&PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc>.

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1 Third, regarding what is likely the largest share of program costs – staff salaries – it
2 appears that the field workers on ADP's payroll were functioning primarily as Knowles campaign
3 workers. As described *supra*, the treasurer of the Knowles Committee appears to have informed
4 supporters that ADP workers would be going door-to-door "to spread Tony's message" and asked
5 them to provide housing for the workers. Also, the recruitment flyer apparently created by ADP
6 reiterated the Committee treasurer's message about workers going "door to door to elect Tony
7 Knowles!" Although there is no information regarding the content of Knowles campaign literature
8 that may have been distributed by ADP workers or scripts that may have been used for phone bank
9 communications or door-to-door canvassing, news accounts suggest that the Knowles Committee
10 was the main beneficiary of the workers' activities.

11 Although Respondent generally describes the component activities of the field program, it
12 provides little detail supporting its position that each of these activities was primarily generic in
13 nature, or that the field program benefited other candidates. In reviewing the available information
14 (e.g., ADP recruiting flyers, photos of ADP offices, statements reportedly made by ADP workers)
15 there appear to be no references to any other candidates, whether federal or non-federal.²³ Other
16 than the unexplained reference in ADP's response to meetings with unnamed "legislative
17 candidates/campaigns," which it claims was part of its field program activities, there is little
18 information indicating that the program was aimed at benefiting any candidate other than Knowles.
19 Accordingly, it would appear that the 20% attribution figure used by ADP in connection with its
20 field program expenses was disproportionate to the benefit received by Knowles. See 11 C.F.R.
21 § 106.1(a)(1).

²³ Also, in contrast with the substantial party coordinated expenditures on behalf of Knowles as reported by ADP and DSCC, it does not appear that any such expenditures were made on behalf of ADP's Democratic nominee for the U.S. House of Representatives, Thomas Higgins (ADP reported no independent expenditures in 2004).

1 If the expenditures exceeding ADP's combined section 441a(d) and 441a(a)(2)(A) limits
2 were made "in cooperation, consultation, or concert, with, or at the request or suggestion of" the
3 Knowles Committee or its agents, an excessive in-kind contribution would result. *See* 2 U.S.C.
4 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a) and (b). For those activities that might be deemed
5 communications (e.g., ADP's telephone calls, *see* 11 C.F.R. § 100.28), the Commission has
6 promulgated separate regulations addressing "party coordinated communications." *See* 11 C.F.R.
7 § 109.37.²⁴

8 Although it is not clear at this time which ADP field program disbursements should be
9 considered party coordinated communications under 11 C.F.R. § 109.37, and which disbursements
10 for activities that are not public communications should be treated as coordinated expenditures
11 under 11 C.F.R. § 109.20, the available information suggests that some degree of cooperation or
12 consultation may have occurred. Despite the assertions of ADP's Executive Director that she
13 developed and oversaw the program and that "no field staff member was supervised directly by"
14 the Knowles campaign, there remain questions as to the role and involvement of Knowles'
15 campaign manager, who appears to have been receiving most of his salary from ADP while the
16 field program was fully operational in the summer and fall of 2004. In addition, the content of the
17 e-mail sent by the treasurer of the Knowles Committee, *see supra* at 3, suggests that she may have
18 coordinated some aspects of ADP's field program, such as mobilizing potential workers. For
19 example, the treasurer states that "we are asking" interns to work for ADP over the summer, and

²⁴ A party communication is coordinated with a candidate, an authorized committee or agent thereof if it meets a three-part test: (1) the communication is paid for by a political party committee or its agent; (2) the communication satisfies at least one of the "content" standards described in Section 109.37(a)(2); and (3) the communication satisfies at least one of the six "conduct" standards described in Section 109.21(d). In *Shays v. FEC*, 414 F.3d 76, 102 (D.C. Cir. July 15, 2005) (pet. for rehearing *en banc* denied Oct. 21, 2005), the appeals court affirmed a district court decision that invalidated the content standard of the coordinated communications regulation. The regulation remains in force pending the promulgation of a new regulation. *Shays v. FEC*, 340 F. Supp. 2d 39, 41 (D.D.C. 2004).

1 that if the recipients “know any interested students, please send them our way.” Another ADP
2 worker – listed as a contact on an ADP flyer recruiting “supporters of Tony Knowles” to work on
3 the field program – appears to have used her <alaskademocrats.org> e-mail account to send out a
4 Knowles campaign press release. *See supra* fn. 4. Finally, there is no information concerning how
5 ADP may have attempted to ensure the independence of unreimbursed expenditures benefiting the
6 Knowles campaign.

7 Therefore, there is reason to believe that the Alaska Democratic Party and Marge
8 Kaiser, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d),
9 441a(f) and 434(b).

10 **B. MUR 5575**

11 **1. Facts**

12 Complainant alleges in MUR 5575 that ADP made “illegal coordinated
13 communications” to benefit the Knowles campaign in the form of “mailers being sent by
14 the ADP to thousands of residents in Alaska.” Complaint at 1. Complainant alleges that
15 ADP had “already” exceeded its limits for party coordinated expenditures by spending over
16 \$1.5 million by opening “joint offices” and “hiring staff to go door to door to help elect”
17 Knowles. *Id.*

18 Complainant submitted copies of three mailers allegedly paid for by ADP. One
19 mailer consists of two pages and includes critical remarks about Lisa Murkowski’s
20 congressional votes on health care benefits for veterans and reservists, stating in large type,
21 “Lisa Murkowski Has Turned Her Back On Those Who Served.” Complaint Att. at 1-2.
22 The first page of the second mailer states, “Tony Knowles – A Strong, Independent And
23 Effective Leader, Creating Jobs For Alaska Families.” *Id.* at 3. The next three pages

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1 include favorable comments and news accounts regarding Knowles' efforts to create or
2 save jobs in Alaska. *Id.* at 5-6. The final mailer states on the first page, "On The Issue Of
3 Hcalth Care For Alaskans, There Are Real Differencces Between Tony Knowles And Lisa
4 Murkowski." *Id.* at 7. The next thrcce pages comment favorably on Knowles' positions on
5 drugs and health care while negatively portraying Murkowski's positions. *Id.* at 8-10. The
6 mailer includes three photographs of Knowles as well as a quote attributed to him.

7 Complainant asserts that no portion of the mailings was done by volunteers; they
8 were "not hand addressed, the postage was not affixed by hand and the material was not
9 placed in an envelope by volunteers." Complaint at 1. All the mailers attached to the
10 complaint state that they were paid for by ADP and contain a Nonprofit Organization
11 mailing permit. Complainant alleges that the mailers are also in violation of the Act's
12 disclaimer requircments, since they do not state whether they were authorized by any
13 candidate or candidate's authorized committee.

14 ADP responds that the mailers were part of an exempt mail program conducted
15 between October 7 and 29, 2004, and that each mailer attached to the complaint was
16 "handled in a significant manner by volunteers" at the "mail facility" of the printing
17 vendor, North Mail, Inc. ADP Response at 1-2. ADP submitted a declaration from
18 Terry Horton, who claims she "served as a volunteer" for ADP and "was responsible for
19 recruiting for and providing the ADP with volunteers to assist in the production of mailings
20 undertaken by the ADP on behalf of' Knowles. Declaration of Terry Horton, dated Dec. 7,
21 2004, ¶¶ 1-2. Horton states that

22 Volunteers operated a machine that laser printed the addresses onto each
23 mail piece. As each piece came off the machines, they were bundled by
24 volunteers into batches by rubberband and sorted into trays and boxes.
25 The volunteers then placed the proper zip code labels on the boxes and

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trays and tagged them as priority/political mail. In the case of rural mail, the mail pieces were placed into mail bags rather than boxes or trays and tagged as priority/political mail by volunteers.

Id. at ¶ 4.

ADP provided a compact disk containing seventy-one photographs dated from October 10 to 19, 2004. Several individuals are depicted at what appears to be a commercial facility, engaging in such activities as guiding mailers through addressing machines and bundling and labeling boxes and bags of mail.

2. Analysis

The Act defines “contribution” and “expenditure” so as to exclude payments by a state committee of a political party for the costs of campaign materials. *See* 2 U.S.C. § 431(8)(B)(ix) and (9)(B)(viii). Payments qualifying for this volunteer exemption are therefore not subject to the Act’s limits on a state party committee’s contributions or expenditures. To qualify for this exemption, the payments must be “used by such committee in connection with volunteer activities on behalf of nominees of such party.” *Id.*

The regulations implementing the volunteer exemption establish that the exemption does not apply to “direct mail,” defined as “any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.” 11 C.F.R. §§ 100.87(a) and 100.147(a). Materials must be “distributed by volunteers and not by commercial or for-profit operations.” 11 C.F.R. §§ 100.87(d) and 100.147(d). In matters involving mailings where a state party committee has claimed that such disbursements did not constitute contributions or expenditures under the Act, the Commission has focused on whether a volunteer effort, rather than a commercial mailing house or other vendor, was responsible for preparing the mailings and delivering them to the post office.

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1 For example, in MUR 4851 (Michigan Republican State Committee), a state party
2 committee presented evidence that volunteers affixed postal indicia (i.e., postage mark with permit
3 number) on each piece of mail, placed address labels on them, and took them to the post office for
4 distribution. Likewise, in MUR 4471 (Montana State Democratic Central Committee), a
5 commercial vendor printed and folded brochures that were sorted, bundled and delivered to the
6 post office by volunteers. *See* Statement of Reasons, MUR 4471, Nov. 19, 1998, at 5. Finally, in
7 MUR 3218 (Blackwell for Congress), volunteers opened the cartons for printed direct mail
8 materials and "stamped on each piece, individually, the return address and the bulk mail permit
9 indicia" and "sorted the pieces into the requisite postal/zip code categories and transported the
10 Mailings to the Postal Service, where they were mailed." *See* Statement of Reasons, MUR 3218,
11 May 23, 1991, at 3. *See also* MUR 2377 (Republican Party of Texas) (volunteer materials
12 exemption applies where volunteers unpackaged, labeled, sorted, bundled, and delivered the
13 mailers to the post office).

14 However, in other state party matters the Commission has determined that volunteers were
15 not sufficiently involved in direct mail activities. For example, in MUR 2994 (Wyoming State
16 Democratic Central Committee), the conciliation agreement stated that the mailings at issue failed
17 to qualify for the volunteer exemption, noting that the mailings were produced by the vendor and
18 "sent directly from the production house" to the post office; the only volunteer involvement with
19 the mailers was reviewing the mailing lists and inserting the county for each address. *See*
20 Conciliation Agreement, MUR 2994, dated Jan. 14, 1991. Also, in MUR 2559 (Oregon
21 Republican Party), the conciliation agreement stated that, "[a]lthough volunteers stamped the
22 postal indicia on one particular mailing, these particular brochures were sent back to the vendor for
23 mailing. . . . The other . . . mailings were also mailed by the vendor." *See* Conciliation Agreement,

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1 MUR 2559, dated March 1, 1991. Finally, in MUR 4754 (Republican Campaign Committee of
2 New Mexico), additional information was needed to assess whether the state party committee
3 satisfied the conditions for the volunteer materials exemption. In that case, the state party
4 committee merely submitted copies of volunteer sign-in sheets to support its claim that volunteers
5 "unloaded the mail at party headquarters . . . stamped the party's non-profit indicia" on the mailers,
6 "bundle[d] the mail . . . and took the mail to the U.S. Post Office, where the volunteers unloaded
7 the mail." MUR 4754 First General Counsel's Report at 10-11. The Commission found there was
8 insufficient information to determine that the exemption applied because "the party's response
9 [did] not state one way or the other whether sorting was performed by the volunteers, or the
10 vendor." *Id.* at 11. After the state party committee provided answers to interrogatories and
11 documents indicating that volunteers bundled and sorted the brochures by zip code, that the
12 committee had sufficient funds from non-national committee sources to pay for the mailers, and
13 that the mailing list was not purchased from a commercial vendor, the Commission took no further
14 action and closed the file.

15 In this matter, it appears that ADP volunteers operated directly out of the mail facilities of
16 North Mail, Inc. While the available information suggests that volunteers printed addresses on the
17 mailers and sorted and bundled them, it is not clear who actually delivered them to the post office.
18 Respondent does not address this issue, and although some of the photographs supplied by ADP
19 appear to show boxes or bundles of mailers near a loading dock, there is no information pertaining
20 to actual delivery.

21 In addition to requiring substantial volunteer involvement, the regulations provide that
22 materials purchased with funds donated by a national party committee do not qualify for the
23 volunteer exemption. *See* 11 C.F.R. §§ 100.87(g) and 100.147(g). Although Respondent

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1 identifies North Mail, Inc. as the printing vendor for the mailers at issue, it does not state, and it is
2 unclear from ADP's disclosure reports, how much was spent on the mailers and when such
3 disbursements were made.²⁵ Since over three-quarters of ADP's federal receipts in 2004 were in
4 the form of transfers from national party committees, the issue is whether ADP had sufficient
5 funds from non-national party sources to pay for the mailers.

6 The questions addressed above need to be resolved to determine whether the mailings at
7 issue are covered by the volunteer material exemption. Although there is no information available
8 indicating how many of each mailer was sent out, the response's references to "bulk mail trays,"
9 ADP's "bulk mail permit" and the volume of mailings depicted in the photographs indicate they
10 constituted a "mass mailing" under 11 C.F.R. § 100.27, and therefore a public communication
11 under 11 C.F.R. § 100.26. Accordingly, the party coordinated communication criteria at 11 C.F.R.
12 § 109.37 must be applied to the mailers to determine their treatment under the Act.

13 The mailers were paid for by a party committee, refer to clearly identified federal
14 candidates, and appear to have been mailed to Alaska residents within 120 days of the general
15 election. See 11 C.F.R. § 109.37(a)(1) and (2)(iii). Regarding the applicable conduct standards at
16 section 109.21(d): the mailings were sent out shortly after ADP reported coordinated expenditures
17 on behalf of Knowles; the mailers included photographs of Knowles and one contained a lengthy
18 quote attributed to him; ADP does not deny the complaint's allegations that the mailings were

²⁵ ADP's 2004 Year-End Report did not disclose any disbursements to North Mail, Inc. during the reporting period covering October 2004, when it claims it operated its exempt mail program. ADP disclosed the following disbursements to North Mail, Inc. prior to October 2004: \$143.32 and \$1,031.64 for mailing and printing on June 23, 2004; \$690.07 for mailing on March 15, 2004, and \$398.23 for mailing on August 4, 2004. However, ADP reported various disbursements in 2005 that may be connected to the mailers at issue, e.g., a \$3,788 payment to North Mail on June 1, 2005 for "printing and postage during Oct. 04." Also, ADP reported significant disbursements to other vendors for "mailing" that may be related to its exempt expenditure program, e.g., \$200,000 and \$56,595 to "AMS Communications, Inc." on October 21 and 28, 2004, respectively.

1 coordinated with the Knowles Committee; and ADP may have been coordinating other
2 expenditures with the Knowles Committee during the same time frame, as discussed in the analysis
3 of ADP's field program, *supra*.

4 Furthermore, ADP had already exhausted its coordinated expenditure limit and as a result
5 exceeded its remaining general election contribution limit.

6 Whether or not the mailers were coordinated with the Knowles Committee, if they
7 were not covered by the volunteer exemption, ADP may have violated the Act's disclaimer
8 requirements. The disclaimers on the mailers do not state whether the communications
9 were authorized by a candidate, or any authorized committee or agent of any candidate.
10 See 2 U.S.C. § 441d(a); cf. 11 C.F.R. § 110.11(e) (communication qualifying as an exempt
11 activity need not state whether authorized by a candidate or candidate committee).

12 Therefore, because the mailers appear to have constituted public communications paid for
13 by ADP, they were required to contain authorization information. 11 C.F.R.
14 § 110.11(a)(1), (b)(2), (b)(3).

15 Therefore, there is reason to believe that the Alaska Democratic Party and Marge Kaiser, in
16 her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d), 441a(f) and 441d(a).

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